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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,160	03/05/2002	Mihaelos N. Mihalos	67328	6020
4955	7590	01/24/2005	EXAMINER	
WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468			TRAN, LIEN T	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/091,160	Applicant(s) MIHALOS ET AL.	
	Examiner Lien T Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 11/8/2004, applicant amends claims 1 and 6 to include the limitation of "rolls press the mixed ingredients into a progressively thinner slab without breaking the crisp baked cookie pieces". This limitation is not supported by the original disclosure. The specification does not disclose anything about pressing without breaking the crisp baked cookie pieces. Page 14 lines 15-17, disclose "to minimize breakage of the fragile baked inclusions" and Page 18 lines 19-20 disclose "to control the extent of breakage of the fragile baked inclusions". These disclosures indicate that breakage does occur; thus, there is no disclosure to support the limitation of "without breaking the crisp baked cookie pieces".

Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a method for cold forming food bars in which cookie pieces are mixed with ingredients comprising filler fat and coating fat. However, applicant does not disclose anywhere in the specification the types of fat that can be used as a filler fat

and the coating fat. Applicant gives a general description of the fat on page 12 but does not disclose the type of fat that is used or the properties of the fat. Applicant states a filler fat is one which is soft and spreadable at room temperature; applicant has not shown that this is a standardize definition of filler fat. The same is true with the coating fat. Applicant does not set forth any example of the type of fat that can be used. According to applicant's description, butter, margarine and shortening are all soft and spreadable at room temperature and thus can be used as filler fat. However, applicant states in the remark that butter has a moisture content of 15% or so which can affect product texture and stability; thus, a fat having a composition similar to chocolate must be included with a filler fat. Applicant does not disclose what this fat having a composition similar chocolate is. One skilled in the art will not know what fat to use to qualify as filler fat and coating fat. Applicant incorporates by reference to US Patent no. 5,378,490; but that patent does not talk about filler fat and coating fat and the fat is not used in a method for forming food bar.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mody.

Mody discloses a method of making a food bar. The process comprises the steps of mixing dry ingredients, separately preparing a binder blend and adding the binder to the dry blend with mixing, heating as necessary to blend the materials. The mixed materials are formed into sheets through roller presses, cut into ribbons subsequently cut into appropriate size bar core. The bar core is cooled and coated with a chocolate or compound coating. The bar comprises 10-40% cereal grains including

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rice crisps and 0-30% texture additives. The texture additives include cookie pieces.

The binder comprises corn syrups, sugars, hydrogenated vegetable oil, humectant and emulsifier. The emulsifier can be lecithin, mono and diglycerides. (see columns 5-6)

Mody does not teach the steps of maintaining the temperature of the mixer to ensure that the fat ingredients do not stick, feeding into a hopper, the use of heated compression rolls, laying the slab on a conveyor to feed through heated slitter knives to form into rope, separating the ropes on the conveyor as recited in claims 1 and 6, the amounts of fat as claimed, the cookies crumb having the size as claimed, the use of cookie fine and cookies pieces and individually wrapping the product.

Since the claims do not define the filler fat and coating fat, any binder comprising a mixture of fats can be interpreted to have a filler fat and coating fat. The emulsifier in the binder disclosed in Mody can be monoglyceride or diglyceride or lecithin which is a fatty substance; they are interpreted to be the filler fat and the hydrogenated vegetable oil is the coating fat because it is a harder fat. As to the amounts, it would have been obvious to one skilled in the art to use any varying amount of fats depending on the fat content, the taste, texture and flavor desired. Higher fat content usually gives a better taste; however, such product is higher in calorie and fat. It would have been obvious to break the cookie into any size depending on the taste perception and the texture desired. For example, if a noticeable taste is wanted of the cookies, it would have been obvious to break them into relatively large size; however, if the reverse is wanted, it would have been obvious to break the cookies into very fine size. It would also have been obvious to break the cookies into any intermediate size between the two end

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points. It would also have been obvious to use a combination of the two depending on the texture wanted. The sizes selected and the proportion of the sizes would have been an obvious matter of preference. It would also have been obvious to use larger amount of the cookie pieces if a more noticeable taste of the cookie is wanted. The selection depends on the type of bar made and would have been an obvious matter of choice. It would have been obvious to one skilled in the art to determine through routine experimentation the optimum parameters such as temperature, time of mixing, feeding, cutting etc.. to obtain the most optimum product. Optimization is within the skill of one in the art. It would have been obvious to use a hopper and a conveyor system to enhance the speed of the process. Such use is well known in the art and would have been readily apparent to one skilled in the art. Mody does not disclose that the cookie pieces are broken during the roller presses. In any event, it would have been obvious to one skilled in the art to control the pressing such that breakage does not occur if one wants a bar in which the cookie pieces are still intact. It would have been obvious to wrap the product individually when the product is made for commercial distribution.

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 14, 2005


LIEN TRAN
PRIMARY EXAMINER
